In the High Court of Punjab and Haryana at Chandigarh.

F.A.O.No.527 of 2006.

Date of decision:15.12.2006.

Satwant Kaur.

...Appellant.

Versus

The Election Tribunal, Gurdaspur and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present; Mr.U.K. Agnihotri Advocate for the appellant.

Mr.N.S.Boparai Advocate for the respondents.

...

Judgment.

S. N. Aggrwal, J.

Elections for the office of Sarpanch of Gram Panchayat of village Ghuman Khurd, Tehsil and District Gurdaspur had taken place on 29.6.2003. Satwant Kaur appellant and Balwinder Kaur,respondent No.2 had contested the elections. The counting of votes gave the following result:-

Total votes polled	1333
Satwant Kaur appellant	643

Balwinder Kaur respondent 621

Invalid votes. 69

Since Satwant Kaur appellant had secured more votes than Balwinder Kaur respondent,therefore, the appellant was declared elected as Sarpanch of Gram Panchayat Ghuman Khurd.

On this, Balwinder Kaur respondent filed the Election Petition challenging the election of Satwant Kaur,appellant as Sarpanch. Her allegations were that she had secured more votes but her votes were considered as cancelled votes by the Returning Officer in collusion with Satwant Kaur and declared the later elected as Sarpanch. Some other allegations were also made.

The appellant contested this Election Petition.

Issues were framed.

The Election Tribunal vide order dated 27.5.2004 ordered re-counting. The said order was challenged by the appellant by filing Civil Revision No.2961 of 2004. It was accepted by this Court vide order dated 8.7.2004. The order of re-count was set aside and Balwinder Kaur respondent was given the liberty to lead evidence in support of her allegations and it was held that only thereafter the Election Tribunal, Gurdaspur shall take a fresh decision with regard to the recounting of votes.

Thereafter Balwinder Kaur respondent examined herself as PW-1,Kuldip Singh as PW-2 and Jasbir Singh as PW-3. These

witnesses supported the allegations made by Balwinder Kaur respondent in her Election Petition on which the Election Tribunal again ordered recounting of votes vide order dated 23.9.2004. The said order of recount was again challenged by the appellant by filing Civil Revision No.4643 of 2004. It was dismissed by this Court vide order dated 28.9.2004. After the recount, the following result emerged:-

Satwant Kaur appellant	604
Balwinder Kaur,respondent No.2.	657.
Rejected	71
Missing	1

Since Balwinder Kaur got more votes, her Election Petition was accepted by the learned Election Tribunal. The election of Satwant Kaur was set aside and Balwinder Kaur was declared elected as Sarpanch of Gram Panchayat Ghuman Khurd.

This order dated 28.9.2004 passed by the Election Tribunal was challenged by the appellant by filing Civil Writ Petition No.15776 of 2004 which was disposed of by the Hon'ble Division Bench of this Court vide judgment dated 9.1.2006 and the appellant was granted liberty to file an appeal on which the present appeal was filed by her.

The submission of learned counsel for the appellant was that she was not granted any opportunity to lead her evidence. It was submitted that Balwinder Kaur respondent closed her evidence on 15.9.2004 and immediately thereafter the file was adjourned for

arguments on 23.9.2004 i.e. after about eight days without granting an opportunity to the appellant to lead evidence. Reference was made to Section 81 of the Punjab State Election Commission Act, 1994 (in short PSEC Act, 1994) and it was submitted that the procedure as laid down in the Code of Civil Procedure was to be followed. As per this procedure, an opportunity was required to be granted to the appellant for leading evidence and since no such opportunity has been granted to the appellant to rebut the allegations of the respondent, therefore, the impugned order dated 28.9.2004 cannot be sustained.

This submission has been considered.

It may be noticed that the order dated 15.9.2004 was not challenged by the appellant in this Court by which the file was adjourned by the Election Tribunal for arguments without affording an opportunity to the appellant for leading evidence. On 23.9.2004, after hearing arguments, the order of recount of votes was passed. This order dated 23.9.2004 was challenged by the appellant by filing Civil Revision No.4643 of 2004 which was dismissed by this Court vide order dated 28.9.2004. Even at that time,no such plea that the appellant has not been granted any opportunity to lead evidence and that her case has suffered material prejudice was raised by the appellant or accepted by this Court. Rather, dismissal of the revision petition filed by the appellant clinches the issue. Since the order of recount was held to be legal and valid, therefore, the proceedings prior to 23.9.2004 cannot be

re-agitated and this Court does not feel inclined to go behind this order.

Moreover, the appellant has not been able to point out if the appellant has suffered any prejudice by non-production of evidence particularly when this Court in the order dated 8.7.2004 passed in Civil Revision No.2961 had granted liberty to Balwinder Kaur respondent to substantiate her allegations by leading evidence. The provisions of Code of Civil Procedure are applicable only to the extent possible and unless prejudice is shown,the non-compliance of the provisions of the Code of Civil Procedure would not improve the case of the appellant. Therefore, there is no merit in the submission of the appellant that because no opportunity was granted to the appellant to lead evidence, the impugned order becomes void.

Another submission made by the learned counsel for the appellant was that the bag of votes opened at the time of recount was in torn condition and,therefore, the order of recount and the result thereof should be rejected. Reference was made to the affidavit filed by the Advocate of the appellant to show that there was no sanctity to the parcel of ballots as the sealed parcel was in torn condition.

This submission has been considered. The order of Election Tribunal has been perused. The Election Tribunal has observed in the impugned order dated 28.9.2004 as under:-

“ The relevant election record already produced by the

Returning Officer vide his statement recorded on the file. The seals of the bag containing the record of election were broken in the presence of above mentioned persons. The seals of the envelops containing the polled votes for the office of Sarpanch were also found intact. However, the said envelop has been found torn. The counsel for the respondent No.1 raised an objection that since the envelop is in torn condition, the recounting of votes may not be carried out. However, on thorough examination, it was found that seals affixed on the bag containing all the election material including the envelop in question were intact and the seals on the envelop containing votes were also in the same condition. The envelop in question might have been torn due to poor quality of paper and pressure of other election material in the bag. Therefore, there appears to be no malafide or irregularities on the part of the Returning Officer or any other official engaged in the election in this regard. Hence,the request of the learned counsel of the respondent No.1 for not carrying out the recounting of votes is not tenable and the same is rejected."

Since the seals on the bag were intact, therefore, tearing of the envelop which was inside the bag does not make any difference when the bag in which envelop was kept was intact.

It was further submitted that even according to the Election Tribunal, one vote was missing and has not been counted for. If the bag had been intact that vote could not have missed. Considered. No doubt, in the earlier counting,there were 1333 votes but at the time of recount, the total number of votes were found to be 1332. The difference of one vote although not explained but that does not affect the merits of the case nor issue of missing vote can be expanded beyond proportion.

It was further submitted that in the earlier recount of votes, the number of invalid votes was only 69 while at the time of recount,71 votes were found to be invalid. This creates a doubt about the authenticity of recount of votes.

This submission has been consider. It has no merit.

The invalid votes have been found in the presence of the parties. The increase in the number of invalid votes was verified by the parties and, therefore, it does not matter whether number of invalid votes has increased if the same is found to be correct. The learned counsel for the appellant has not challenged that valid votes have been taken to be invalid but it has been merely argued that the increase in invalid votes has created suspicion in the recounting process.

This submission has no force at all. The increase in the number of invalid votes does not invalidate the recount. In the recount, the margin of votes between the appellant and Balwinder Kaur respondent is very big i.e to the tune of 53 votes and,therefore, no

mileage can be gained by the appellant from one missing vote or from the increase of two in the number of invalid votes.

Keeping in view the discussion held above, I find no illegality or infirmity in the impugned order passed by the Election Tribunal.

There is no merit in the present appeal and the same is dismissed.

December 15,2006. (S. N. Aggarwal)
Jaggi Judge